

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1676 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 - No.

KAMLESHWARIBA HARDEVSIKH SARVAIYA AND ANR

Versus

HARDEVSIKH MAHIPATSIKH SARVAIYA AND ANOTHER

Appearance:

MR SURESH M SHAH for Petitioners

MR YS LAKHANI for Respondent No. 1

MR.ST MEHTA,ADDL. PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/02/97

ORAL JUDGEMENT

The petitioners have preferred this petition for enhancement of maintenance awarded to them by learned Judicial Magistrate, First Class, Dhrol and confirmed by the learned Sessions Judge, Jamnagar.

The petitioners preferred Cri.Misc.Application No.5 of 1993 before the learned Judicial Magistrate,

First Class, Dhrol for maintenance under section 125 of the Code. It was the claim of the petitioners that the petitioners were being ill-treated and were driven out from the house by respondent No.1 and his relatives. The claim of the petitioners is that the respondent No.1 was serving and was earning a salary of Rs.5,000/-. He also owned a house in Rajkot and agricultural lands. Both the petitioners, therefore, claimed a monthly maintenance of Rs.500/- each. The learned Magistrate considering the evidence placed before him held that the petitioners have sufficient reason to live separate from respondent No.1 and that the salary of the respondent No.1 was Rs.2,938/-. The learned Magistrate also held that the respondent No.1 owned four acres of agricultural land. Considering this income, the learned Judge awarded a monthly maintenance of Rs.400/-, Rs.300/- to the petitioners respectively. Feeling aggrieved, the petitioners preferred Criminal Revision Application No.145 of 1993 before the learned Sessions Judge, Jamnagar. Learned Sessions Judge found that the salary of the respondent No.1 was around Rs.3,000/-. However, he did not own any agricultural land. It was found that the father of the respondent No.1 owned 16 acres of agricultural land and he had four sons, respondent No.1 being one of them. Considering the salary of the respondent No.1 to be Rs.3,000/- the court concluded that the monthly maintenance of Rs.700/- awarded to the petitioners was just and did not call for any alteration. The learned Judge, therefore, under his judgment and order dated 28th September, 1994, dismissed the revision application preferred by the petitioners.

Feeling aggrieved, the petitioners have preferred this petition under Article 227 of the Constitution. The petitioners have claimed that each of the petitioners should have been awarded monthly maintenance of Rs.500/-. Learned Advocate Mr. Shah has appeared for the petitioners and has contended that both the courts below have recorded a finding that the petitioners had sufficient reason to live separate from respondent No.1.. Further it has been found that the respondent No.1's monthly salary was around Rs.3,000/and he owned a house. It has also been found that the respondent No.1's father owned agricultural lands admeasuring 16 acres and the respondent No.1 had no other financial liability. Considering these facts, he has submitted that if monthly maintenance were granted to the petitioners as claimed by them, that would amount to just 1/3rd of the salary of the respondent No.1 which can easily be awarded to the present petitioners. In support of his claim he has relied upon the judgment of this court in the matter

of_Hasamkhan Mahimkhan and Another (1986 GLH 164);and
in the matter of_Vanitaben Naranbhai & Sons.v. Naranbhai
Raghavbhai Makwana & Another(32(2)GLR 805). He has
therefore submitted that the maintenance awarded to the
petitioners by the courts below is not commensurate with
the status of the respondent No.1 and the petitioners
should be awarded maintenance of Rs.500/each.

Learned Advocate Mr.Lakhani has appeared for the
respondent No.1 and has contended that the present
petition being in the nature of second revision
application at the instance of the petitioners is not
maintainable. The petition should, therefore, be
rejected.

It is true that the salary of the respondent No.1
is found to be that of Rs.3,000/-. However, it is not
proved that he owned any agricultural land. Agricultural
land belonging to his father cannot be termed as his
unless and until it is partitioned between the father and
the sons. The present petition being in the nature of
second revision application at the instance of the
aggrieved party, cannot normally be entertained unless an
exceptional reason exists. The courts below have awarded
maintenance to the petitioners after considering the
evidence placed on the record of the matter. The amount
arrived at by the courts below cannot be said to be
perverse which would call for an interference by this
court under Article 227 of the Constitution.

In the circumstances, the same cannot be
interfered with in the present petition. Petition is,
therefore, dismissed. Rule is discharged.
